

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

**EAST COAST SHEET METAL
FABRICATING CORP.,
d/b/a EASTCOAST CAD/CAM,**

Plaintiff,

v.

AUTODESK, INC.,

Defendant.

Civil No. _____

COMPLAINT

The plaintiff, East Coast Sheet Metal Fabricating Corp. d/b/a EastCoast CAD/CAM (“EastCoast”), alleges in the afore-captioned matter as follows:

THE PARTIES

1. EastCoast is a corporation of Massachusetts with a principal place of business at 33 Boston Road West, Marlborough, MA 01752.
2. The defendant named in this action is Autodesk, Inc. (“Autodesk”). Upon information and belief, Autodesk is a Delaware corporation having a principal place of business at 111 McInnis Parkway, San Rafael, California 94903 and 100 Commercial Street, Suite 301, Manchester, New Hampshire 03101.

NATURE OF THE ACTION

3. This is a civil action for patent infringement, breach of fiduciary duty, fraud and unjust enrichment.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States (35 U.S.C. § 1, et seq.) and the common law. This court has subject matter jurisdiction pursuant to 28 U.S.C. §§1338 and 1367.

5. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391 since Autodesk is located in this Judicial District and has been, and is, engaged in substantial and continuous business activities in this Judicial District.

THE FACTS

6. The partnership between EastCoast and Autodesk traces its origins back to the January, 2004 Air-Conditioning, Heating and Refrigeration Convention where EastCoast was demonstrating its Fabrication CAD (computer aided design) and CAM (computer aided manufacturing) software products. The EastCoast products provided innovative technology for fabricators/contractors of building systems such as plumbing and HVAC (heating, ventilation and air-conditioning). At the show, Joe Massaro (“Massaro”) of EastCoast observed Autodesk’s Autodesk Building Systems (“ABS”) CAD software, which only had design capabilities, but no fabrication capability. Recognizing a potential synergy between the two companies as result of Autodesk’s focus on design and EastCoast’s focus on fabrication, Massaro approached Autodesk to discuss a potential partnership that would combine the strengths of each company to create a product having a continuous workflow from design to fabrication.

7. In March 2004 a handshake deal was struck between Massaro of EastCoast and Paul McRoberts, Director of Product Development for Autodesk, in which it was agreed that both companies would work together to create a software product that achieved a true design through fabrication workflow. A press release announced the EastCoast and Autodesk alliance:

EC-CAD™ meets Autodesk® Building Systems

LITTLETON, MA November 30, 2004—EastCoast CAD/CAM announces the formation of an alliance with Autodesk® that will deliver an unprecedented and unmatched combination of engineering design software and fabrication software. The integration of EC-CAD™ and Autodesk® Building Systems will change the way in which engineering drawings are brought from design to fabrication. The developments from the collaboration of both companies will enable users to obtain an actual drawing without ever needing to redraw the system.

(Ex. 1)

8. Later that year, EastCoast and Autodesk engaged in a fourteen-city tour to promote their integrated software solution:

Autodesk Building Systems North American Tour			
Wed., Sept. 21 Atlanta, GA	Wed., Sept. 28 Toronto, ON	Thurs., Sept. 29 Detroit, MI	
Tues., Oct. 4 Boston, MA	Tues., Oct. 11 Philadelphia, PA	Wed., Oct. 12 New York, NY	Mon., Oct. 17 Montreal, QC
Tues., Nov. 1 San Francisco, CA	Wed., Nov. 2 Los Angeles, CA	Tues., Nov. 15 Washington, D.C	Thurs., Nov. 17 Chicago, IL
Wed., Dec. 7 Vancouver, BC	Thurs., Dec. 8 Seattle, WA	Tues., Jan 10 Houston, TX	

Autodesk and EastCoast CAD/CAM will also be demonstrating our integrated environment at the upcoming SMACNA Conference, October 16-20

Autodesk

(Ex. 2)

9. Later, for reasons unknown, Autodesk announced that it had also formed an alliance with Micro Application Packages Limited (“MAP”), an EastCoast competitor that also had fabrication software. However, the MAP/Autodesk alliance fell apart and MAP announced product offerings that competed with both Autodesk in design and EastCoast in fabrication.

10. Thereafter, Autodesk recommitted to working with EastCoast to meet the challenges posed by MAP. At this time, EastCoast had less than 20 employees and annual revenues of less than \$2 million. Autodesk, had around 5,000 employees and net revenues well in excess of \$1 billion.

11. On November 14, 2006, Autodesk confirmed in writing what it had already been telling EastCoast in prior discussions -- that it was no longer interested in working with MAP. Autodesk told EastCoast that it would no longer support MAP's CADDuct product. Autodesk also reaffirmed its support for EastCoast and that it looked forward to developing products that directly competed with MAP, especially on MAP's home turf – the United Kingdom:

-----Original Message-----

From: Laura Gutwillig [mailto:laura.gutwillig@autodesk.com]

Sent: Tuesday, November 14, 2006 12:02 PM

To: David Quigley

Subject: RE: a question..

Hi Dave,

Sorry for the delay in responding, things are a little too crazy at the moment. This is a great question, in fact one that has been floating around for a few years now. We are positioning ABS as the better, faster AutoCAD for MEP meaning get you CDs out the door faster Increased productivity for design layout and creation of construction documents. We are not positioning ABS as a design engineering tool that does calculations or analysis or shop drawings per say, however we do position ABS as being able to export design data into 3rd party application for design calculations, analysis, fabrication and cost estimating.

In regards to CADDuct, based on our positioning CADDuct really can only be compared to ABS from an HVAC layout stand point. CADDuct works with ABS and AutoCAD as of ABS 2007 (which is another story I will tell you at another time ☺). There will be no direct link though to CADDuct like we have with EastCoast and I have no plan to provide such a link in the future.

Page 1 of 2

Part of my reasoning for asking your thoughts on supporting the international market is in regards to having a fabrication solution first in the UK and Nordics, then beyond. I would love to work with EastCoast to bring your product along with ABS as the fabrication component as we go global. This will be direct competition to CADDuct however with the direct plug in and support for pipe we have a slight advantage to the moment and can work to make that a larger advantage moving forward. I would like to talk more about this when we talk at AU, but for now I hope that helps.

-Laura

(Ex. 3)

12. Based on Autodesk's written and verbal assurances that it was committed to working exclusively with EastCoast, East Coast entered into a Development Agreement with Autodesk on October 31, 2007, which terminated in eighteen (18) months. (Ex. 4) Throughout the term of the

Development Agreement, and for several years after termination, EastCoast invested time and resources in marketing and developing products with Autodesk that competed with MAP. The collaboration had them working jointly together in the field to sell the combined software package:

From: Peter Terwilliger [<mailto:peter.terwilliger@autodesk.com>]
Sent: Tuesday, November 14, 2006 8:32 AM
To: David Derocher
Cc: Jay Ayala
Subject: ABS 2007/EastCoast CAD Interface Questions in Seattle

Hey Dave –

During a recent ABS user group meeting in Seattle, the topic of conversation turned to fabrication and the use of EastCoast CAD along side with ABS. Specifically, several of these users had heard that the Eastcoast CAD, an application they tried but did not adopt, has significantly updated their links to ABS. Basically, these design-build users are skeptics but have an open mind and are willing to reconsider their earlier decision. **Our technical specialist in Seattle, Jay Ayala, is looking for more information and a contact/sales engineer to jointly help these users understand the benefits of our collaboration.** Do you have a technical sales contact that he can follow up with regarding the interoperability between ABS and ECCAD?

Thanks in advance!

Pete

The Autodesk logo, featuring the word "Autodesk" in a blue, sans-serif font with a registered trademark symbol.

Peter Terwilliger
North American BSD Engineering Technical Specialists Manager

(Ex. 5)

13. EastCoast engineers also began collaborating with Autodesk engineers by providing Autodesk with proprietary and confidential design information and know-how concerning an EastCoast proprietary connector called a Universal Joint. (Ex. 4)

14. In late 2007, the partnership expanded to include developing software for use with additional Autodesk products such as the Revit MEP and the AutoCAD MEP platforms:

Subject: EastCoast CAD/ Revit MEP Kickoff Planning Minutes: 12.03.2007
Date: Sunday, December 9, 2007 9:30:16 PM Central Standard Time
From: Toby Smith
To: 'Derocher', 'Dave Quigley', 'Randy Swaim', 'Ilia Pobedinsky', Tony Sinisi, Kyle Bernhardt, Jason Martin, Jitender Uppal, Brandon Jackson, Jorgen Dahl
CC: Laura Gutwillig, Steven Butler, Steve Milligan

EastCoast CAD/ Revit MEP Kickoff Planning Minutes

Monday, 12.03.2007

Attendees:

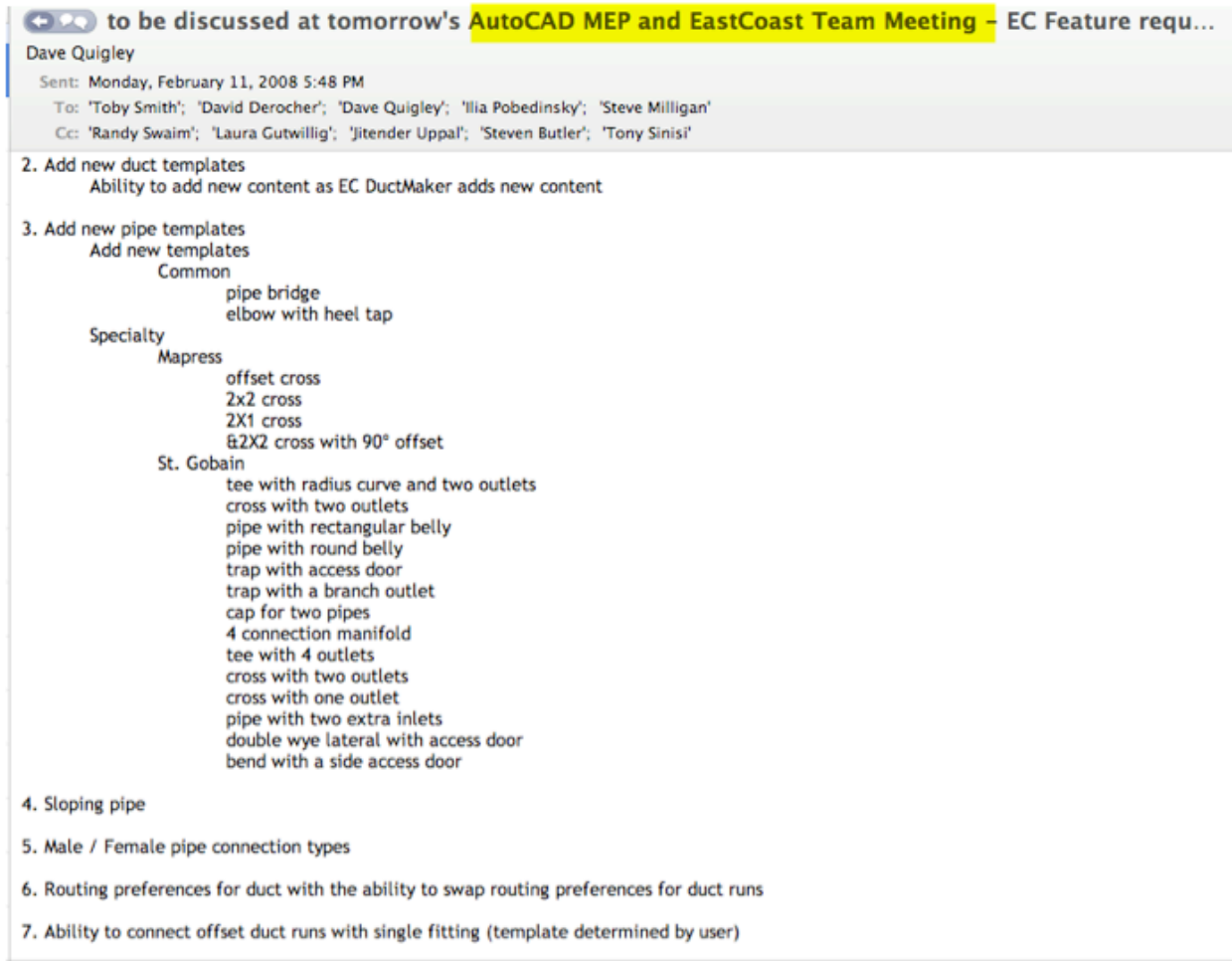
David Derocher (ECC); Dave Quigley (ECC); Randy Swaim (ECC); Ilia Pobedinsky (ECC); Tony Sinisi; Kyle Bernhardt; Jason Martin; Jitender Uppal; Brandon Jackson; Jorgen Dahl; Toby Smith

GENERAL INFORMATION

- EastCoast CAD/CAM (ECC), based in Littleton, MA, has been building and supporting 3D CAD/CAM software for the HVAC, sheet metal, piping, and plumbing industry for over 25 years. Their motto is "Design to fabrication" and they are known as the fastest HVAC mechanical drawing package and the most economical plasma cutting systems in the industry.
- Earlier this year, ECC and Autodesk entered into a strategic partnership.
- ECC has a piping and sheetmetal software solution built on top of AutoCAD MEP. Currently, they are able to take a design from AutoCAD MEP, replace the parts with manufacturer-specific ones and directly utilize the drawings for fabrication. This is done via a plug-in and work is underway to make this a more integrated, seamless process.
- ECC is offering a fully integrated solution that will be available shortly after the release of the 2009 version of AutoCAD MEP.
- ECC provided a demo of their current product offering as well as their upcoming new version that is integrated with AME 2009.
- ADSK has created a set of part templates for use by ECC to allow them to dynamically create their catalogs at run-time based on the manufacturer-specific values from their databases.

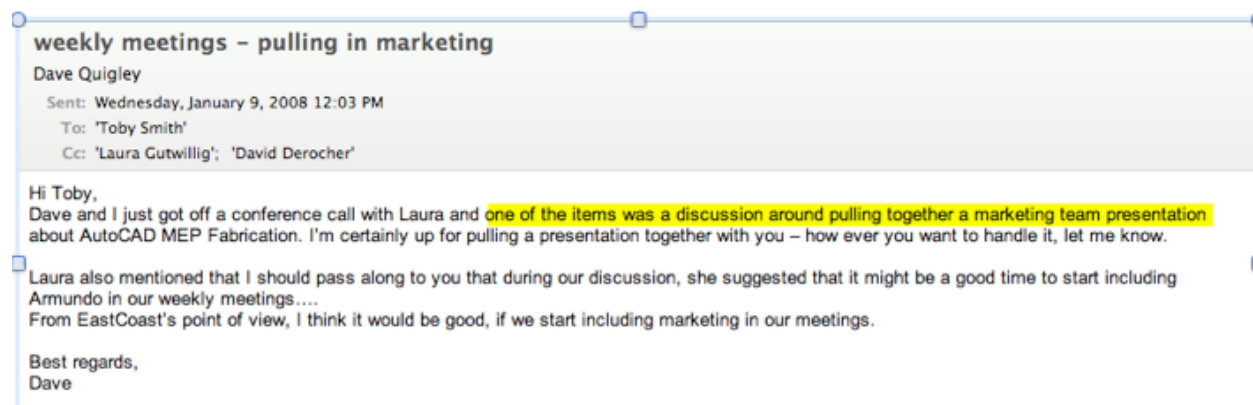
(Ex. 6)

15. This required EastCoast, at considerable financial expense, to build products from the ground up with Autodesk. Throughout the product development, EastCoast and Autodesk viewed the task before them as a team effort. They engineered the products as a team:



(Ex. 7)

They marketed the products as a team:



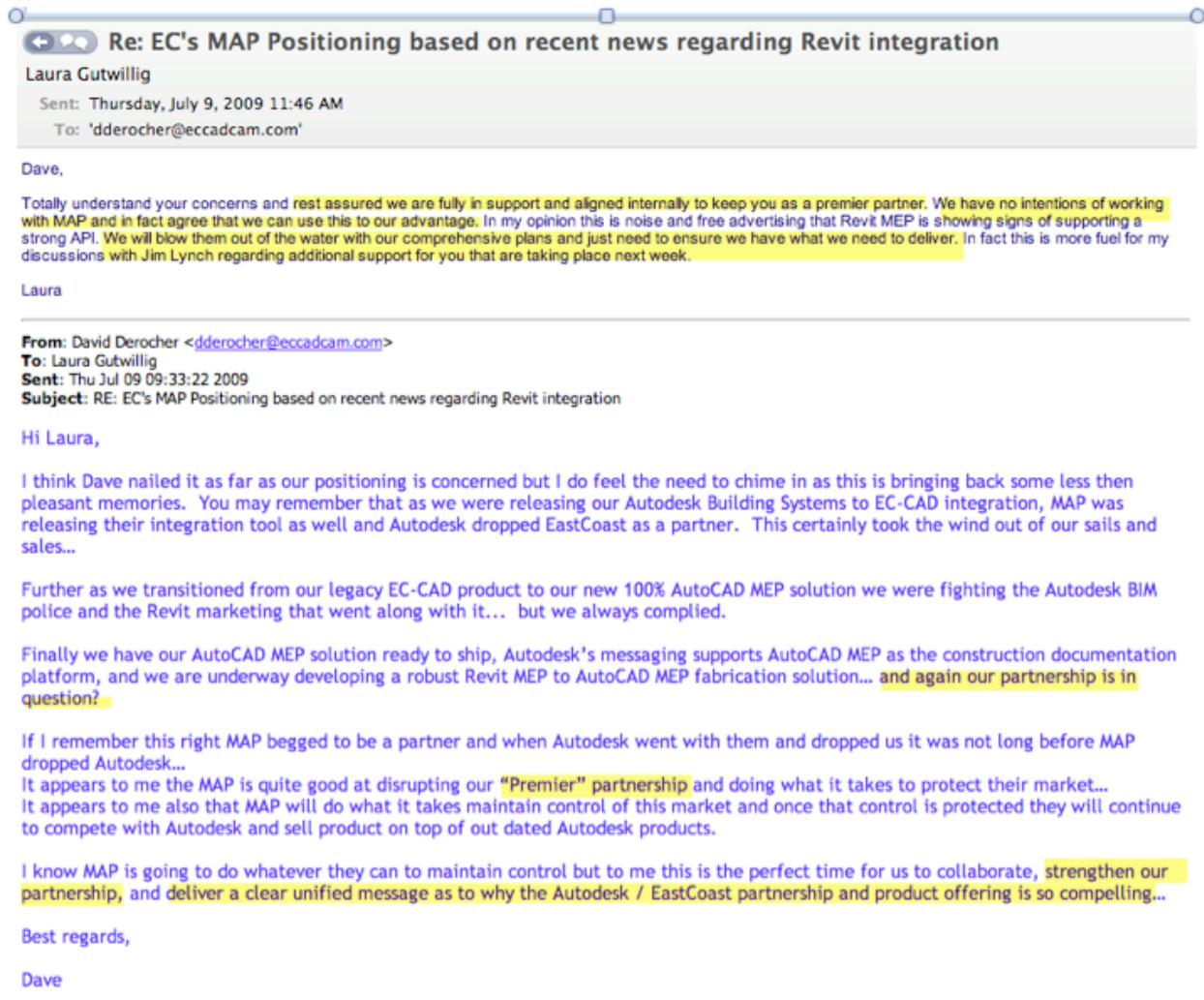
(Ex. 8)



Autodesk/ EastCoast Team Photo

(Ex. 9)

16. By the time the Development Agreement had terminated, the joint development effort had begun to take a financial toll on the much smaller EastCoast and, as a result, EastCoast again sought Autodesk's assurance that Autodesk would not abandon the project for EastCoast's competitor, MAP, as had been done before. Autodesk reassured EastCoast both verbally and in writing that it had no intention of working with MAP, that EastCoast was its "premier partner" and that by working together they would "blow" MAP "out of the water:"



(Ex. 10)

17. By the end of 2009, the partnership had solidified to the extent that Autodesk was contemplating taking an equity interest in or acquiring EastCoast. The parties continued their efforts to work together to “blow” MAP “out of the water.”

18. When testing was about to commence around March of 2011, Autodesk again acknowledged the value of the expertise EastCoast added to the partnership:

From: Feng(Max) Ding [<mailto:feng.ding@autodesk.com>]

Sent: Tuesday, March 22, 2011 10:45 PM

To: David Derocher; Jeff Agla

Cc: Laura Gutwillig; Tingjie (Jay) Zhu; Jiayin (Claude) Ge; Jitender Uppal; Rong (Rome) Li; Rui (Bill) Zhang; Xiaofeng (Hill) Fang; Sue Gorte; Joseph Yao

Subject: RE: API work required

Hi David,

That's really a good news. You know ECC's expertise and partnership with AME is extremely high valued by whole ACA/AME team. This is why testing is the most emphasized part. The safety of your intellectual properties is the first aim of this change. Moreover, our QA might not have the adequate knowledge in doing the testing. So I was trying to seek the help from your side, which was obviously well responded. I have to say it is really appreciated.

Till now, the document we have is Rome's email. If you think it doesn't provide enough information, or you have any other suggestions, please feel free to let us know. We can setup a meeting to discuss the technical details. This ECO is in draft mode, we are still collecting the ideas or suggestions from everyone.

As to your question, I believe Jeff has given his answer at the bottom of this thread.

"Again this will be a 2013 fix unless it can be added to 2012 via SP with no data or visual fidelity concerns."

We will be waiting for the assessment from your development.

Best regards,

Max

(Ex. 11)

19. In June of 2011, Autodesk was apprised of the progress being made with adapting the jointly designed software platform to meet an Army Corp of Engineers building standard:

From: Dave Quigley [<mailto:dquigley@eccadcam.com>]

Sent: Wednesday, June 29, 2011 10:17 AM

To: frank.moore@autodesk.com; john.sullivan@autodesk.com; 'Robert Middlebrooks'

Cc: 'Laura Gutwillig'; 'Jeff Agla'; dquigley@eccadcam.com

Subject: FW: SPie Hi Performance (UNCLASSIFIED)

Hello Frank, John and Robert (Laura and Jeff),
I wanted to update you all on EastCoast's participation with Bill East and his committee. There are only two HVAC and Mechanical software providers, EastCoast CAD/CAM and TSI (representing MAP Software (UK) who were asked to participate inside this committee. To provide some additional background, I've attached Dave Derocher's response to the committee's request for our initial implementation/software architecture in response to their initial draft SPie requirements. To paraphrase Bill East's comments following our presentation yesterday as well as TSI's response and architectural content demonstration for our respective product sets:

Bill East stated:

"The EastCoast IFC model was much more on the mark than this one we just received (from TSI)"

"The TSI model has element proxy's... It's a big blob of stuff that we don't know much about and that cannot be managed or used very well... There is nothing on the Type Tab which is not very useful."

In other words, the EastCoast - Autodesk content integration and implementation was received by the committee as a much better fit with the committee's overall design for implementing SPie and ultimately, COBie. There is certainly lots more ahead of us, including of course, adapting our software app to be in full compliance with their requirements. My intention in copying you all is to keep you current with EastCoast's efforts to continue moving our joint Design to Fabrication MEP platform workflow in lockstep with all relevant Industry Standard Building Service Requirements.

Please feel free to contact me if you have any questions.

Best regards,

Dave

(Ex. 12)

20. Then, in a meeting on October 12, 2011, Autodesk informed EastCoast that Autodesk was purchasing MAP. With the acquisition of MAP, the joint effort to “blow” MAP “out of the water” came to an end.

COUNT I – PATENT INFRINGEMENT

21. EastCoast repeats and incorporates by reference the allegations set forth in paragraphs 1 to 20 above.

22. EastCoast is the owner by assignment of U.S. Patent Nos. 7,917,340 (‘340 Patent) (Exhibit 13); 7,499,839 (‘839 Patent) (Exhibit 14); and 8,335,667 (‘667 Patent) (Exhibit 15) (collectively “the EastCoast Patents”).

23. Autodesk has infringed and continues to infringe the claims of the EastCoast Patents by making, using, offering for sale, and selling in the United States products such as the AutoCAD MEP and Autodesk Fabrication Products covered by the claims of the EastCoast Patents.

24. Autodesk’s infringement has been willful.

25. Autodesk’s infringing acts has caused and will cause continued damage to EastCoast in an amount to be proven in trial.

26. Autodesk’s continued acts of infringement will further cause immediate and irreparable harm to EastCoast for which there is no adequate remedy at law, and for which EastCoast is entitled to injunctive relief under 35 U.S.C. § 283.

WHEREFORE, EastCoast respectfully requests this Honorable Court to order the following relief:

- A) Declaring that Autodesk has infringed, and continues to infringe the EastCoast patents under 35 U.S.C. § 271;
- B) Declaring that Autodesk has willfully infringed and continues to willfully infringe the EastCoast Patents;

- C) Temporarily and permanently enjoining Autodesk from further infringement of the EastCoast Patents;
- D) Awarding EastCoast money damages pursuant to 35 U.S.C. § 284, together with costs and prejudgment interest;
- E) Awarding EastCoast treble damages pursuant to 35 U.S.C. § 284;
- F) Declaring this to be an exceptional case pursuant to 35 U.S.C. § 285 and awarding EastCoast reasonable attorney's fees; and
- G) Awarding Attorney's fees, prejudgment interests, costs and other such relief this Court deems just and proper.

COUNT II – BREACH OF FIDUCIARY DUTY

27. EastCoast repeats and incorporates by reference the allegations set forth in paragraphs 1 to 26 above.

28. By virtue of EastCoast's and the Autodesk's relationship which was viewed by both parties as a joint venture or partnership that was created with the goal of developing software to compete with MAP, a fiduciary duty arose between Autodesk and EastCoast. As a result, Autodesk had a duty to act with the highest degree of good faith in its dealings with EastCoast.

29. Autodesk breached its fiduciary duty by engaging in the acts and omissions alleged hereinabove, including secretly engaging in the acquisition of MAP, while, at the same time, leading EastCoast to believe that Autodesk was still honoring its promise to EastCoast that it "had no intentions of working with MAP" and that it was committed to working with EastCoast to "blow" MAP "out of the water."

30. Had Autodesk informed EastCoast that it was not committed to EastCoast, EastCoast would not have expended the resources it did in working with Autodesk to directly compete with MAP.

31. As a result, Autodesk has caused EastCoast financial damage and has acted with malice entitling EastCoast to punitive and exemplary damages.

WHEREFORE, EastCoast respectfully requests that judgment be entered in its favor and against Autodesk and that the Court grant the following relief to EastCoast:

- A) Actual damages in an amount to be determined;
- B) Exemplary and punitive damages;
- C) Prejudgment and post judgment interest;
- D) Attorney's Fees;
- E) Court costs; and
- F) All other relief to which EastCoast is entitled and the Court deems just and proper.

COUNT III – FRAUD

32. EastCoast repeats and incorporates by reference the allegations set forth in paragraphs 1 to 31 above.

33. Autodesk has engaged in the acts and omissions alleged hereinabove, including secretly engaging in the acquisition of MAP, while, at the same time, representing to EastCoast that it “had no intentions of working with MAP” and that it was committed to working with EastCoast to “blow them [MAP] out of the water.” Either at the time the representations were made they were untrue, or, some time later they became untrue when Autodesk began pursuing the acquisition of MAP.

34. With full knowledge of its representations to EastCoast, Autodesk intentionally pursued the acquisition of MAP while intentionally continuing to engage in a course of conduct with EastCoast that caused EastCoast to believe Autodesk was still committed to working with EastCoast to compete with MAP. Autodesk's suppression or omission of the material fact that it was in the process of acquiring MAP is equivalent to a false representation, since it constitutes an indirect representation that such fact does not exist.

35. If Autodesk had truthfully informed EastCoast of its intent to acquire MAP, EastCoast would not have continued working with Autodesk to "blow" MAP "out of the water."

36. As a result, Autodesk has financially damaged EastCoast and has acted with malice entitling EastCoast to punitive and exemplary damages.

WHEREFORE, EastCoast respectfully requests that judgment be entered in its favor and against Autodesk and that the Court grant the following relief to EastCoast:

- A) Actual damages in an amount to be determined;
- B) Exemplary and punitive damages;
- C) Prejudgment and post judgment interest;
- D) Attorney's Fees;
- E) Court costs; and
- F) All other relief to which EastCoast is entitled and the Court deems just and proper.

COUNT IV – UNJUST ENRICHMENT

37. EastCoast repeats and incorporates by reference the allegations set forth in paragraphs 1 to 36 above.

38. Autodesk was enriched by EastCoast's investment of time and expense in the joint effort to develop software to compete with MAP. By simultaneously working with EastCoast to create

integrated design to fabrication software while also pursuing MAP, Autodesk engineered a win-win situation for itself at EastCoast's expense. In its secret acquisition talks with MAP, on information and belief, Autodesk used its relationship with EastCoast as leverage to negotiate a more favorable acquisition price for MAP. Moreover, in the event the acquisition fell through, Autodesk was still in a position to compete with MAP by virtue of keeping its premier partner, EastCoast, in the dark about its intent to acquire MAP.

39. Autodesk has been and will continue to be unjustly enriched if permitted to reap the benefits it obtained at EastCoast's expense.

40. As a direct and proximate result of Autodesk's unjust enrichment, EastCoast has suffered and continues to suffer damages.

WHEREFORE, EastCoast respectfully requests that judgment be entered in its favor and against Autodesk and that the Court grant the following relief to EastCoast:

- A) Actual and other damages reflecting the value of the benefits Autodesk has unjustifiably received in an amount to be determined;
- B) Exemplary and punitive damages;
- C) Prejudgment and post judgment interest;
- D) Attorney's Fees;
- E) Court costs; and
- F) All other relief to which EastCoast is entitled and the Court deems just and proper.

COUNT V – BREACH OF CONTRACT

41. EastCoast repeats and incorporates by reference the allegations set forth in paragraphs 1 to 40 above.

42. As set forth in Paragraph 3.2 of the Development Agreement, Autodesk agreed that EastCoast owned all right, title and interest in the Universal Joint defined in EXHIBIT A-2 that was attached thereto. (Ex. 4) In addition, Autodesk also agreed to transfer any right, title in interest it had in the Universal Joint to EastCoast. (*Id.*)

43. Autodesk has breached the Development Agreement by retaining an interest in the EastCoast Universal Joint as demonstrated by Autodesk currently using the Universal Joint in the Autodesk AutoCAD MEP software.

44. As a direct and proximate result of Autodesk's breach, EastCoast has suffered and continues to suffer damages.

WHEREFORE, EastCoast respectfully requests that judgment be entered in its favor and against Autodesk and that the Court grant the following relief to EastCoast:

- A) Actual damages;
- B) An injunction prohibiting Autodesk from further exerting control of the Universal Joint, to cease using the Universal Joint in its products, and to transfer any interest it has in the Universal Joint to EastCoast;
- C) Prejudgment and post judgment interest;
- D) Attorney's Fees;
- E) Court costs; and
- F) All other relief to which EastCoast is entitled and the Court deems just and proper.

Respectfully submitted,

Dated: December 28, 2012

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East Coast Sheet Metal Fabricating Corp.
d/b/a EastCoast CAD/CAM

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), plaintiff, East Coast Sheet Metal Fabricating Corp. d/b/a EastCoast CAD/CAM, demands a jury trial of all issues properly triable to a jury in this case.

Dated: December 28, 2012

By: /s/ Thomas Tracy Aquilla

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